

ASSEMBLY BILL

No. 1356

Introduced by Assembly Member Strickland

February 26, 1999

An act to amend Sections 1368 and 1368.01 of the Health and Safety Code, relating to health care service plans.

LEGISLATIVE COUNSEL'S DIGEST

AB 1356, as introduced, Strickland. Health care service plans: grievance procedures.

Existing law, the Knox-Keene Health Care Service Plan Act of 1975, provides for the licensure and regulation of health care service plans by the Commissioner of Corporations. Existing law requires plans to establish and maintain a grievance system for enrollees. Under existing law, the grievance system is required to include a system of aging of pending complaints that are pending and unresolved for 30 days or more, and to report quarterly to the commissioner regarding those pending complaints. Existing law also requires plans to resolve grievances within 30 days, whenever possible, and to provide enrollees and subscribers with a written statement on the disposition or pending status of the grievance within 30 days of the plan's receipt of the grievance. Under existing law, willful violation of these provisions is a crime.

This bill would instead require the grievance system to include a system of aging of pending complaints that are pending and unresolved for 21 days or more, and commencing January 1, 2000, to report quarterly to the commissioner

regarding those complaints pending for 21 days or more. This bill would instead require plans to resolve grievances within 21 days, whenever possible, and to provide enrollees and subscribers with a written statement on the disposition or pending status of the grievance within 21 days of the plan's receipt of the grievance.

By changing the definition of a crime, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1368 of the Health and Safety
2 Code is amended to read:

3 1368. (a) Every plan shall do all of the following:

4 (1) Establish and maintain a grievance system
5 approved by the department under which enrollees may
6 submit their grievances to the plan. Each system shall
7 provide reasonable procedures in accordance with
8 department regulations that shall ensure adequate
9 consideration of enrollee grievances and rectification
10 when appropriate.

11 (2) Inform its subscribers and enrollees upon
12 enrollment in the plan and annually thereafter of the
13 procedure for processing and resolving grievances. The
14 information shall include the location and telephone
15 number where grievances may be submitted.

16 (3) Provide forms for complaints to be given to
17 subscribers and enrollees who wish to register written
18 complaints. The forms used by plans licensed pursuant to
19 Section 1353 shall be approved by the commissioner in
20 advance as to format.



(4) Keep in its files all copies of complaints, and the responses thereto, for a period of five years.

(b) (1) (A) After either completing the grievance process described in subdivision (a), or participating in the process for at least 60 days, a subscriber or enrollee may submit the grievance or complaint to the department for review. In any case determined by the department to be a case involving an imminent and serious threat to the health of the patient, including, but not limited to, the potential loss of life, limb, or major bodily function, or in any other case where the department determines that an earlier review is warranted, a subscriber or enrollee shall not be required to complete the grievance process or participate in the process for at least 60 days.

(B) A grievance or complaint may be submitted to the department for review and resolution prior to any arbitration.

(C) Notwithstanding subparagraphs (A) and (B), the department may refer any grievance or complaint to the State Department of Health Services, the Department of Aging, the federal Health Care Financing Administration, or any other appropriate governmental entity for investigation and resolution.

(2) If the subscriber or enrollee is a minor, or is incompetent or incapacitated, the parent, guardian, conservator, relative, or other designee of the subscriber or enrollee, as appropriate, may submit the grievance or complaint to the department as the agent of the subscriber or enrollee. Further, a provider may join with, or otherwise assist, a subscriber or enrollee, or the agent, to submit the grievance or complaint to the department. In addition, following submission of the grievance or complaint to the department, the subscriber or enrollee, or the agent, may authorize the provider to assist, including advocating on behalf of the subscriber or enrollee. For purposes of this section, a “relative” includes the parent, stepparent, spouse, adult son or daughter, grandparent, brother, sister, uncle, or aunt of the subscriber or enrollee.

1 (3) The department shall review the written
2 documents submitted with the subscriber's or the
3 enrollee's request for review, or submitted by the agent
4 on behalf of the subscriber or enrollee. The department
5 may ask for additional information, and may hold an
6 informal meeting with the involved parties, including
7 providers who have joined in submitting the grievance or
8 complaint, or who are otherwise assisting or advocating
9 on behalf of the subscriber or enrollee. The department
10 shall send a written notice of the final disposition of the
11 grievance or complaint, and the reasons therefor, to the
12 subscriber or enrollee, the agent, to any provider that has
13 joined with or is otherwise assisting the subscriber or
14 enrollee, and to the plan, within 60 calendar days of
15 receipt of the request for review unless the commissioner,
16 in his or her discretion, determines that additional time
17 is reasonably necessary to fully and fairly evaluate the
18 relevant grievance or complaint. Distribution of the
19 written notice shall not be deemed a waiver of any
20 exemption or privilege under existing law, including, but
21 not limited to, Section 6254.5 of the Government Code,
22 for any information in connection with and including the
23 written notice, nor shall any person employed or in any
24 way retained by the department be required to testify as
25 to that information or notice. On or before January 1,
26 1997, the commissioner shall establish and maintain a
27 system of aging of complaints that are pending and
28 unresolved for 60 days or more, that shall include a brief
29 explanation of the reasons each complaint is pending and
30 unresolved for 60 days or more.

31 (4) A subscriber or enrollee, or the agent acting on
32 behalf of a subscriber or enrollee, may also request
33 voluntary mediation with the plan prior to exercising the
34 right to submit a grievance or complaint to the
35 department. The use of mediation services shall not
36 preclude the right to submit a grievance or complaint to
37 the department upon completion of mediation. In order
38 to initiate mediation, the subscriber or enrollee, or the
39 agent acting on behalf of the subscriber or enrollee, and
40 the plan shall voluntarily agree to mediation. Expenses



1 for mediation shall be borne equally by both sides. The
2 department shall have no administrative or enforcement
3 responsibilities in connection with the voluntary
4 mediation process authorized by this paragraph.

5 (c) The plan's grievance system shall include a system
6 of aging of complaints that are pending and unresolved
7 for ~~30~~ 21 days or more. ~~On or before Commencing~~
8 January 1, ~~1997~~ 2000, the plan shall provide a quarterly
9 report to the commissioner of complaints pending and
10 unresolved for ~~30~~ 21 or more days with separate
11 categories of complaints for Medicare enrollees and
12 Medi-Cal enrollees. The plan shall include with the report
13 a brief explanation of the reasons each complaint is
14 pending and unresolved for ~~30~~ 21 days or more. The plan
15 may include the following statement in the quarterly
16 report that is made available to the public by the
17 commissioner:

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19 "Under Medicare and Medi-Cal law, Medicare
20 enrollees and Medi-Cal enrollees each have separate
21 avenues of appeal that are not available to other
22 enrollees. Therefore, complaints pending and
23 unresolved may reflect enrollees pursuing their
24 Medicare or Medi-Cal appeal rights."
25

26 If requested by a plan, the commissioner shall include this
27 statement in a written report made available to the public
28 and prepared by the commissioner that describes or
29 compares complaints that are pending and unresolved
30 with the plan for ~~30~~ 21 days or more. Additionally, the
31 commissioner shall, if requested by a plan, append to that
32 written report a brief explanation, provided in writing by
33 the plan, of the reasons why complaints described in that
34 written report are pending and unresolved for ~~30~~ 21 days
35 or more. The commissioner shall not be required to
36 include a statement or append a brief explanation to a
37 written report that the commissioner is required to
38 prepare under this chapter, including Sections 1380 and
39 1397.5.

(d) Subject to subparagraph (C) of paragraph (1) of subdivision (b), the grievance, complaint, or resolution procedures authorized by this section shall be in addition to any other procedures that may be available to any person, and failure to pursue, exhaust, or engage in the procedures described in this section shall not preclude the use of any other remedy provided by law.

(e) Nothing in this section shall be construed to allow the submission to the department of any provider complaint or grievance under this section. However, as part of a provider's duty to advocate for medically appropriate health care for his or her patients pursuant to Sections 510 and 2056 of the Business and Professions Code, nothing in this subdivision shall be construed to prohibit a provider from contacting and informing the department about any concerns he or she has regarding compliance with or enforcement of this chapter.

SEC. 2. Section 1368.01 of the Health and Safety Code is amended to read:

1368.01. (a) The grievance system shall require the plan to resolve grievances within—~~30~~ 21 days whenever possible and shall require the plan to provide enrollees and subscribers with a written statement on the disposition or pending status of the grievance within—~~30~~ 21 days of the plan's receipt of the grievance.

(b) The grievance system shall include a requirement for expedited plan review of grievances for cases involving an imminent and serious threat to the health of the patient, including, but not limited to, potential loss of life, limb, or major bodily function. When the plan has notice of a case requiring expedited review, the grievance system shall require the plan to immediately inform enrollees and subscribers in writing of their right to notify the department of the grievance. The grievance system shall also require the plan to provide enrollees, subscribers, and the department with a written statement on the disposition or pending status of the grievance no later than five days from receipt of the grievance.

SEC. 3. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California

1 Constitution because the only costs that may be incurred
2 by a local agency or school district will be incurred
3 because this act creates a new crime or infraction,
4 eliminates a crime or infraction, or changes the penalty
5 for a crime or infraction, within the meaning of Section
6 17556 of the Government Code, or changes the definition
7 of a crime within the meaning of Section 6 of Article
8 XIII B of the California Constitution.

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